

10/622,419

Remarks/arguments:

Initially, applicant has reviewed the prior art cited against the newly cited reference to Phillips 4,933,525 and considers 4,786,773 worthy of consideration. Thus it teaches that the sensor in the microwavable container is spaced away from the food to be heated. Please pay attention to col 7, lines 28 to the end of col. 8.

After considering all the references cited, including 4,786,773, applicant has decided to present only claims 5 and 9, and to further amend claim 20. Turning now to claim 5, and to claim 20 as amended, these claims recite "A polymerization temperature test element for a polymerization device for polymerizing a dental restoration product, the polymerization device having an energy source for irradiating the dental restoration product with one or both of light radiation and thermal radiation to effect polymerization of the dental restoration product." Clearly this combination of features is not shown in the references. Initially, the examiner has chosen to give no weight to the preamble stating that "intended use has been continuously held not to be germane to determining the patentability of the apparatus." However, as pointed out in section 2111.02 of the MPEP, "If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is necessary to give life, meaning, and vitality to the claim, then the claim preamble should be construed as if in the balance of the claim." Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999). As a practical matter, the "energy source for irradiating a dental restoration product" is disclosed as "one or both of light radiation and thermal radiation to effect polymerization of the dental restoration product" not a microwave oven which is merely used for heating foods. Furthermore, dental restoration products are to be polymerized, not merely heated. Accordingly, it is believed that the preamble gives "life, meaning and vitality" to the claims. Accordingly, it is respectfully submitted that the various microwavable food heating dishes are not relevant and should not be considered relevant.

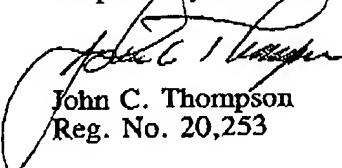
Furthermore, even if the prior art is considered relevant, the subject matter of the various references do not teach the subject matter of the claims. Claim 5 recites "a base element (20); a centrally located receipt region (12) carried by the base element (20) and ...".

the base element (20) includes a floor surface (26), and the receipt region is disposed centrally of the base element (20) and extends beyond the floor surface." This combination of features, along with the other features set forth in claim 5, are clearly not taught by the prior art. Accordingly, this claim should be allowed. Claim 20 is similar to claims 5 and should be allowed for the same reason.

Claim 9, which has been edited to improve its form, recites "the color indicia of each color-temperature indicator (32, 34) having the characteristic that at least one of its brightness and its original color changes in an irreversible manner upon reaching a predetermined release temperature unique to the respective color-temperature indicator (32, 34)." The prior art cited and applied by the examiner, as well as newly cited 4,786,773, do not disclose this claimed feature. Accordingly, this claim is also deemed to be allowable.

In that all remaining claims in this application are deemed to be allowable for the reasons set forth above, the allowance of this application is respectfully requested. In the absence of an allowance, the office is respectfully requested to enter this amendment for purposes of appeal.

Respectfully submitted,



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